

AMENDED IN ASSEMBLY MAY 17, 2005

AMENDED IN ASSEMBLY APRIL 19, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

## ASSEMBLY BILL

**No. 757**

**Introduced by Assembly Member Chan**

February 18, 2005

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~~An act to amend Section 511.3 of, and to amend, repeal, and add Section 511.1 of, the Business and Professions Code, to amend Section 1375.7 of, and to amend, repeal, and add Section 1395.6 of, the Health and Safety Code, to amend Section 10178.4 of, and to amend, repeal, and add Section 10178.3 of, the Insurance Code, and to add Section 4609.5 to, and to amend, repeal, and add Section 4609 of, the Labor Code, relating to health care. An act to amend Section 511.3 of, and to add Section 511.2 to, the Business and Professions Code, relating to health care.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 757, as amended, Chan. Health care providers: contracts.

~~Existing law, the Knox-Keene Health Care Service Plan Act of 1974, the willful violation of which is a crime, provides for the regulation of health care service plans by the Department of Managed Health Care. Existing law provides for the regulation of disability insurers by the Insurance Commissioner.~~

Existing law requires a contracting agent, as defined, that sells, leases, assigns, transfers, or conveys a list of contracted health care providers and their contracted reimbursement rates to a payors to make specified disclosures to providers and to allow providers to decline to be on the list. ~~Existing law requires the payor to provide an explanation of benefits or explanation of review, and, upon the written~~

~~request of a provider who has received a claim payment, to make a demonstration that it is entitled to pay the contracted rate.~~

~~This bill would, effective July 1, 2006, prohibit a contracting agent from selling, leasing, assigning, transferring, or conveying its list of contracting health providers and their contracted rates unless certain conditions are met, including having a direct contract with the provider that meets specified criteria, obtaining affirmative written consent from the provider, and making certain disclosures. The bill would also, effective July 1, 2006, revise the requirements that a payor claiming eligibility to a contracted rate must meet, and would provide that a payor's determination of entitlement to pay a contract rate is refuted if a provider supplies specified documentation. The bill would make other related changes.~~

~~Because this bill would create new requirements for health care service plans, the willful violation of which would be a crime, it would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

*This bill would require a contracting agent's contract with a provider to contain all material terms and to make specified disclosures. The bill would require the contracting agent to ensure through contract terms that all payors for a list comply with the underlying contract and meet other requirements, and would prohibit a contracting agent from transferring, selling, assigning, leasing, or conveying a list to a nonpayor, except as specified. The bill would prohibit an underlying contract from obligating a provider to participate in materially different networks, products, or business lines. The bill would revise the definition of a contracting agent and would make other related changes.*

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~. State-mandated local program: ~~yes-no~~.

*The people of the State of California do enact as follows:*

- 1 *SECTION 1. Section 511.2 is added to the Business and*
- 2 *Professions Code, to read:*

1     511.2. *In order to promote fair business practices that*  
2 *provide a more competitive and properly functioning health care*  
3 *delivery system, a contracting agent shall comply with all of the*  
4 *following requirements:*

5     (a) *A contracting agent's contract with a provider shall*  
6 *contain within the contract itself all material terms consistent*  
7 *with applicable California law, including, but not limited to,*  
8 *statutory requirements for the timely and accurate payment and*  
9 *processing of claims. The contract shall clearly disclose to the*  
10 *provider that the provider's name and contracted rate can be*  
11 *sold, leased, assigned, transferred, or conveyed to another payor.*

12     (b) *A contracting agent shall ensure through contract terms*  
13 *that all payors to which it has sold, leased, assigned, transferred,*  
14 *or conveyed a list of contracted providers and their contracted*  
15 *rates comply with the underlying contract between the*  
16 *contracting agent and provider and pay the provider pursuant to*  
17 *the rates of payment set forth in the underlying contract.*

18     (c) *A contracting agent shall not transfer, sell, assign, lease,*  
19 *or convey the list of contracted providers to any entity that is not*  
20 *a payor. For purposes of this subdivision, the term "payor"*  
21 *refers to a self-insured employer, health care service plan,*  
22 *insurer, or other entity that assumes the risk for payment of*  
23 *claims or reimbursement for services provided by contracted*  
24 *providers, or reciprocal interstate arrangements between*  
25 *members of a national trade association for independent locally*  
26 *owned health plans and insurers. Notwithstanding the above, a*  
27 *merger or acquisition of a network of contracted providers in*  
28 *whole by a contracting agent is permissible if the contracting*  
29 *agent notifies physicians about the acquisition and provides them*  
30 *with an opportunity to terminate their contract.*

31     (d) *The contracting agent shall ensure through contract terms*  
32 *that any payor to which it has sold, leased, assigned, transferred,*  
33 *or conveyed a list of contracted providers and their contracted*  
34 *rate does not sell, lease, assign, transfer, or convey that list to*  
35 *any other payor or entity.*

36     (e) *After receiving information from a contracted provider that*  
37 *a payor to whom a contracting agent has sold, leased,*  
38 *transferred, or assigned its list of contracted providers and their*  
39 *contracted rates is not complying with the terms of the*  
40 *underlying agreement, including, but not limited to, statutory*

1 requirements for timely and accurate payment of claims, and the  
2 contracted provider has fulfilled the appeal or grievance process  
3 described in the underlying agreement, if any, without  
4 satisfaction, the contracting agent shall research the situation  
5 and within 45 days do at least one of the following:

6 (1) Take reasonable action to ensure that the payor complies  
7 with the terms of the underlying contract and take other action  
8 necessary to resolve the issue, including, but not limited to,  
9 termination of the contracting agent's agreement with the payor  
10 where necessary.

11 (2) Assume direct responsibility for the payment of the claim  
12 in question by paying the provider the amount owed under the  
13 contract.

14 (f) A contracting agent shall require those payors that are by  
15 contract eligible to claim a provider's contracted rates to cease  
16 claiming entitlement to that rate upon termination of the  
17 provider's underlying contract or upon termination of the  
18 provider's authorization for the payor to pay the contracted  
19 reimbursement rate as permitted under the terms of the contract  
20 between the contracting agent and the provider.

21 (g) Beginning July 1, 2006, a payor, or any representative of  
22 the payor processing claims or claims payments, shall clearly  
23 identify on the evidence of benefit, remittance advice or any other  
24 explanation of review the entity assuming financial risk for  
25 services and the identity of the contracting agent through which  
26 the payment rate and any discount is claimed. Where the payor  
27 issues member or subscriber identification cards, the cards shall  
28 also identify the entity assuming financial risk for services  
29 provided and the contracting agent whose contract controls  
30 payment for services received by the patient. The explanation of  
31 benefits, remittance advice or other explanation of review shall  
32 also include the names and telephone numbers of the contracting  
33 agent's provider relations unit or other appropriate  
34 representative of the contracting agent.

35 (h) No payor, payor representative, administrator of claims  
36 payment, or other third party acting on behalf of a payor shall be  
37 eligible to claim or otherwise proffer a provider's specific  
38 contracted rate for services except to the extent that the rate is  
39 based on the contract that directly controls payment for services  
40 provided to that patient and is reflected on the evidence of

benefit, remittance advice or any other explanation of review and on any patient identification card issued to the patient.

(i) For purposes of this section, “contracting agent” shall have the meaning contained in Section 511.1, Section 1395.6 of the Health and Safety Code, Section 10178.3 of the Insurance Code and Section 4609 of the Labor Code. A contracting agent shall not include either of the following:

(1) A group of health care providers organized as a partnership or professional corporation that contracts with only one health care service plan to provide or arrange for the provision of health care services to that plan’s members.

(2) A hospital corporation that has an identical board of directors with a health plan that exclusively contracts with the group of providers in paragraph (1) to provide professional medical services to its enrollees.

SEC. 2. Section 511.3 of the Business and Professions Code is amended to read:

511.3. (a) When a contracting agent sells, leases, or transfers a health provider’s contract to a payor, the rights and obligations of the provider shall be governed by the underlying contract between the health care provider and the contracting agent.

(b) Notwithstanding any other provision of law, the underlying contract shall not obligate a provider to participate in materially different networks, products, or business lines, nor require the provider to consent to the sale, lease, transfer, assignment, or conveyance of the contracted list of providers to any network, product, or business line that is materially different from that to which the underlying contract applies, either as it relates to increased workload or other responsibilities imposed on the provider or as it relates to any decreased benefits conferred on the provider.

(c) For purposes of this section, the following terms shall have the following meanings:

(1) “Contracting agent” has the meaning set forth in paragraph (2) of subdivision (d) of Section 511.1, Section 1395.6 of the Health and Safety Code, Section 10178.3 of the Insurance Code, and Section 4609 of the Labor Code. A contracting agent shall not include either of the following:

(A) A group of health care providers organized as a partnership or professional corporation that contracts with only

1 one health care service plan to provide or arrange for the  
2 provision of health care services to that plan's members.

3 (B) A hospital corporation that has an identical board of  
4 directors with a health plan that exclusively contracts with the  
5 group of providers in subparagraph (A) to provide professional  
6 medical services to its enrollees.

7 (2) "Materially different" means attributes that a reasonable  
8 provider would consider in determining whether to participate in  
9 a network, product, or business line, including, but not limited to,  
10 the fee schedule amount, the types of services to be provided,  
11 claims processing and payment rules, utilization review  
12 procedures, and patient collection processes. Neither different  
13 benefit designs, nor the status of the payor as licensed or  
14 non-licensed or as a government-sponsored program shall  
15 constitute material differences.

16 (3) "Payor" has the meaning set forth in paragraph (3) of  
17 subdivision (d) of Section 511.1.

18 (d) Nothing in this section shall preclude a contracting agent  
19 from offering a health care provider the option to participate in  
20 a materially different network, product, or business line, so long  
21 as the provider has the right to choose or reject a materially  
22 different network, product, or business line. The provider's  
23 contract shall clearly set forth the provider's right to exercise  
24 choice with respect to each option, without penalty, sanction, or  
25 retaliation of any kind, including exclusion from the contracting  
26 agent's other networks, products, or lines of business.

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29 **All matter omitted in this version of the bill**  
30 **appears in the bill as amended in Assembly,**  
31 **April 19, 2005.**  
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